

**THE STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2015-04

**APPLICATION OF
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR A CERTIFICATE OF SITE AND FACILITY**

APPLICANT'S MOTION TO PARTIALLY WAIVE SITE 301.08(c)(2)

NOW COMES Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) (the “Applicant”) in support of its Application for a Certificate of Site and Facility For the Construction of a New 115 kV Electric Transmission Line from Madbury, New Hampshire to Portsmouth, New Hampshire (the “Project” or “Line F107”), by and through its attorneys, McLane Middleton, Professional Association, and respectfully submit this request pursuant to Site 302.05 for a Partial Waiver of New Hampshire Code of Administrative Rules Site 301.08(c)(2). In support of their Motion, the Applicant states as follows:

I. INTRODUCTION

The New Hampshire Legislature amended RSA 162-H:7 in 2014 to add a requirement that an applicant for a Certificate of Site and Facility for an energy facility “[d]escribe in reasonable detail the elements of and financial assurances for a facility decommissioning plan.” RSA 162-H:7(g). The Applicant addresses this requirement in Section 301.08(c)(2) of its Application.

The SEC recently adopted a new rule, Site 301.08(c)(2), in December 2015 directing applicants for all energy facilities to submit:

A facility decommissioning plan prepared by an independent qualified person with demonstrated knowledge and experience in similar energy facility projects and cost estimates; the decommissioning plan shall include each of the following:

- a. A description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials;
- b. The provision of financial assurances in the form of an irrevocable letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company of the facility owner maintaining at all times an investment grade credit rating;
- c. All transformers shall be transported off-site; and
- d. All underground infrastructure at depths less than four feet below grade shall be removed from the site and all underground infrastructure at depths greater than four feet below finished grade shall be abandoned in place.

The Applicant requests that the SEC waive the requirement that the decommissioning plan be prepared by an independent qualified person as well as the content requirements provided in subsections (b), (c) and (d), above.¹

As provided in the Application and pre-filed testimony of Michael Ausere, and as discussed herein, it is not anticipated that the Applicant will decommission the new 115 kV Line F107. The Independent System Operator-New England (“ISO-NE”) has determined that the Line F107 is needed in order for the electric transmission system to continue to operate reliably. Once constructed, the new Line F107 will form an integral part of the electric transmission system and become a baseline element in ISO-NE’s planning studies. Transmission lines of this nature must remain operational and, thus, are typically rebuilt, as needed, and remain in service

¹ The Applicant is not seeking a waiver of Subsection (a) because they have already satisfied this requirement – the Application and the pre-filed testimony of Michael Ausere already describes in reasonable detail the sources and means by which PSNH would assure sufficient and secure funding to implement the plan.

indefinitely. If, hypothetically, ISO-NE determined that Line F107 was no longer needed and the Applicant determined that Line F107 needed to be decommissioned, the cost of decommissioning would be available from the sources described in the pre-filed testimony Michael Ausere and in Section 301.08(c)(2) and in accordance with a Federal Energy Regulatory Commission (“FERC”) approved transmission tariff.

Site 302.05 provides that the SEC shall waive a provision if it finds that a waiver serves the public interest and will not disrupt the orderly and efficient resolution of matters before it. The public interest is satisfied if a rule is onerous or inapplicable under the circumstances, or if the purpose of the rule is met by an alternative method.

The Applicant satisfies these standards and hereby requests a partial waiver of the decommissioning details set forth in Site 301.08(c)(2). To the extent that the Line F107 is decommissioned in the future, the Applicant has submitted a description of the decommissioning plan in as much detail as is reasonable at this stage and are prepared to submit a more detailed plan to the SEC for its review prior to any actual decommissioning of Line F107.

II. DISCUSSION

The Committee’s rules provide that the SEC:

shall waive any of the provisions of this chapter, except where precluded by statute . . . upon request by an interested party, if the committee or subcommittee finds that:

- (1) The waiver serves the public interest; and
- (2) The waiver will not disrupt the orderly and efficient resolution of matters before the committee or subcommittee.

Site 302.05(a). To determine whether the rule satisfies the public interest, the SEC “shall waive a rule if: (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or (2) The purpose of the rule would be satisfied by an alternative method

proposed.” Site 302.05(b). As further explained below, strict compliance with the newly adopted decommissioning rule does not serve the public interest given the circumstances of this Project and the purpose of the rule will be satisfied by an alternative method. Moreover, granting the waiver will not disrupt the orderly and efficient resolution of this proceeding.

The Applicant requests a waiver of the requirement that they hire an independent third-party to prepare the decommissioning plan for two reasons. First, the Applicant can satisfy this rule by an alternative method, namely by using their own highly trained and experienced personnel who are very likely the most knowledgeable and qualified to prepare any such plan. Requiring the Applicant to hire a third party would be an unnecessary expenditure of customer money and would not, therefore, be in the public interest.

Second, requiring that a decommissioning plan be prepared by an independent person at the time an application is submitted is impracticable and should be deemed inapplicable to the circumstances of an electric transmission project built for reliability purposes. Unlike wind energy and other generation facilities, it is extremely rare for transmission owners to decommission and completely remove a 115 kV transmission line and related facilities that are needed for reliability purposes. As an electrical transmission system evolves to meet demands and changing conditions, ISO-NE, transmission owners and other stakeholders determine what transmission facilities should be built, upgraded and/or modified. Once a transmission line is constructed for reliability purposes, it becomes an integral part of the electric transmission system in the New England region that ISO-NE includes as an element in its studies. Thus, while it is not uncommon for existing high voltage transmission lines to be re-conducted and refurbished, it is only under exceptional circumstances that they are removed completely. For this reason, there are no federal tariffs that require the preparation of decommissioning plans for

such lines and transmission owners do not do so in the normal course of business, let alone several decades before any such decommissioning would reasonably be expected to occur. Under these circumstances, it is reasonable for the SEC to find that the requirement to hire an independent person to prepare a decommissioning plan at the time of application is inapplicable to reliability projects.

The Applicant has also included decommissioning information in its Application, which further satisfies the statutory requirement to describe in reasonable detail the elements of a facility decommissioning plan. The new rule Site 301.08(c)(2) does not expressly require applicants to provide a fully detailed decommissioning plan. However, to the extent that the SEC interprets its new rule to require such details now, the Applicant requests a waiver from that requirement as well. Again, transmission lines that are built to ensure the continued reliability of the electric transmission system typically are reconductored, refurbished or otherwise upgraded to meet the changing needs of the system and remain in-service for several decades. They are rarely decommissioned. Thus, the decommissioning information that the Applicant has provided is what is reasonably available at this time. A more detailed decommissioning plan for Line F107 cannot be developed now as it would need to take into account any physical changes to the ROW and to the lines located thereon that may have occurred over time as well as all applicable laws and regulations that exist at the time of decommissioning. The alternative and more practicable method of satisfying the purpose of this rule would be for the Applicant to submit a detailed decommissioning plan, to the extent required at the time of decommissioning, to the Committee pursuant to its authority under RSA 162-H:4, I (c) to monitor the construction and operation of the facility to ensure compliance with the terms and conditions of a certificate.

The Applicant also seeks a waiver of Site 301.08(c)(2)(b), requiring the provision of specific types of financial assurance, because the purpose of this rule is satisfied by an alternative method. Specifically, the Applicant has demonstrated in their Application and pre-filed testimony of Michael Ausere that it has the enduring financial strength and reliability to fund the cost of decommissioning the Line F107 if and when that occurs. Furthermore, under FERC's Uniform System of Accounts, decommissioning is considered an asset retirement obligation. In accordance with FERC guidelines and Generally Accepted Accounting Procedures, the fair value of the liability associated with an asset retirement obligation is recorded once the company has the obligation and the cost is depreciated and recovered, subject to FERC approval, over the useful life of the asset. Thus, because the FERC-approved transmission tariff provides a satisfactory alternative mechanism for recovering the cost of decommissioning of Line F107, if it were to occur, separate financial assurance is not required and any such requirement should be waived.

The construction of Line F107 does not include the installation or addition of any new transformers. Because the Applicant will not construct any new transformers as part of this Project, Site 301.08(c)(2)(c) is inapplicable and the Applicant requests that this rule be waived in its entirety.

Lastly, Site 301.08(c)(2)(d) requires that infrastructure at depths greater than four feet below grade be abandoned in place, otherwise that it be removed. The Applicant requests that the SEC waive this rule as inapplicable. The Project will be built primarily on an existing utility ROW that is owned in fee by the Companies or is controlled by them through perpetual easements. Unlike public roadways that can be put to several different public and private uses

(e.g., water, sewer, gas, etc.), the ROW will be dedicated exclusively to utility use for the foreseeable future.

Moreover, complete removal of transmission infrastructure is unnecessary in an existing ROW or within public roads; fully removing the infrastructure could potentially create more severe environmental impacts in certain locations. As the Project is constructed in an existing ROW, it may be more environmentally beneficial to leave the bottoms of transmission structures (the part of the transmission structure below grade) in place, especially if they are located in protected wetlands or other resource areas that may exist at the time of decommissioning. More specifically, Line F107 requires the construction of underground segments, which include duct banks, manholes, underground cable, and submarine cable. These inert materials are typically placed three to ten feet below grade and designed not to impede surface activities such as vehicle travel or agricultural uses. Should the Applicant be required to strictly comply with this rule, the Applicant would have to dig down to the top of the underground facilities, remove the upper portion of the underground facilities to four feet below grade, and then re-grade the excavated soil or road. Additionally, the submarine cable is installed at 3.5 to 8 feet deep below the sediments of Little Bay. Undertaking removal of these facilities would almost certainly cause more environmental impacts than abandoning the entire underground and underwater facilities in place. In addition to environmental concerns, removal would place hardships on the underlying landowners whose property the F107 line traverses. Therefore, the Applicant requests a waiver from this rule in its entirety.

As part of the Applicant's request for a partial waiver, the Applicant will further submit a decommissioning plan, should the removal of the Project infrastructure be required, based on the

ROW and the existing state and federal land use and environmental rules in existence at the time of the decommissioning.

The granting of these partial waivers will not disrupt the orderly and efficient resolution of the proceedings before the Committee. Indeed, given the information already provided by the Applicant in this proceeding, the SEC already has enough information to decide whether the Applicant have the requisite financial capability to construct and operate the Project.

III. CONCLUSION

The Applicant has shown that requirements of Site 301.08(c)(2) are inapplicable under the circumstances and that the purpose of RSA 162-H:7, V(g) and the rule is satisfied by an alternative method. The Applicant has already described the elements of a decommissioning plan in reasonable detail at this stage, without having an independent person create a separate decommissioning plan. The Applicant will provide specific engineering and contractor information if and when the line is decommissioned. In addition, sufficient and secure funding of decommissioning is assured, without providing an irrevocable letter of credit, performance bond, surety bond, or unconditional payment guaranty executed by a parent company, because as described in the Application and pre-filed testimony, the Applicant has sufficient financial strength and operate under a FERC-approved tariff that governs asset retirement obligations. Therefore, the Applicant respectfully request that the Committee grant a partial waiver of Site 301.08(c)(2).

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WHEREFORE, the Applicant respectfully requests that the Presiding Officer:

- A. Find that partial waiver of the decommissioning rule serves the public interest;
- B. Find that waiver will not disrupt the orderly and efficient resolution of matters before the subcommittee; and
- C. Grant such further relief as requested herein and as deemed appropriate.

Respectfully Submitted,

Public Service Company of New Hampshire d/b/a

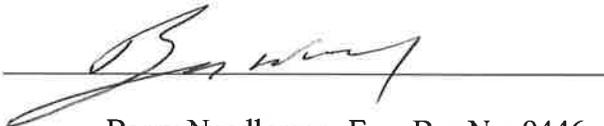
Eversource Energy

By its attorneys,

McLANE MIDDLETON
PROFESSIONAL ASSOCIATION

Dated: April 12, 2016

By: _____



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Certificate of Service

I hereby certify that on the 12th of April, 2016, an original and one copy of the foregoing Motion was hand-delivered to the New Hampshire Site Evaluation Committee and an electronic copy was served upon the SEC Distribution List.

Barry Needleman